





MEDICAL JURISPRUDENCE;

OR

A CODE OF

ETHICS AND INSTITUTES,

ADAPTED TO THE PROFESSIONS OF

PHYSIC AND SURGERY.

*See the advertisement in the  
last page.*

----- QUICQUID DIGNUM SAPIENTE  
BONO-QUE EST.

HOR. Lib. I. Ep. IV.

*Nulla enim vitæ pars, neque publicis, neque privatis, neque forensibus, neque domesticis in rebus, neque si tecum agas quid, neque si cum altero contrahas, vacare officio potest: In eoque colendo sita vitæ est honestas omnis, et in negligendo turpitude.*

CIC. de Off. Lib. I. Cap. ii.

MEDICAL JURISPRUDENCE;

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SECTION I.

OF PROFESSIONAL CONDUCT, RELATIVE TO HOSPITALS,  
OR OTHER MEDICAL CHARITIES.

I. **HOSPITAL** PHYSICIANS and SURGEONS should minister to the sick, with due impressions of the importance of their office; reflecting that the ease, the health, and the lives of those committed to their charge depend on their skill, attention, and fidelity. They should study, also, in their deportment, so to unite *tendernefs* with *steadinefs*, and *condescension* with *authority*, as to inspire the minds of the patients with gratitude, respect, and confidence.

II. The *choice* of a *physician* or *surgeon* cannot be allowed to hospital patients, consistently with the regular and established succession of medical attendance. Yet personal confidence is not less important to the comfort and relief of the sick-poor, than of the rich, under similar circumstances: And it would be equally just and humane, to inquire into and to indulge their partialities, by occasionally calling into consultation the favourite practitioner. The rectitude and wisdom of this conduct will be still more apparent, when it is recollected that patients in hospitals not unfrequently request their discharge, on a deceitful plea of having received relief; and afterwards procure another recommendation, that they may be admitted under the physician or surgeon of their choice. Such practices involve in them a degree of falsehood; produce unnecessary trouble; and may be the occasion of irreparable loss of time in the treatment of diseases.

III. The *feelings* and *emotions* of the patients, under critical circumstances, require to be known and to be attended to, no less than the symptoms of their diseases. Thus, extreme *timidity*, with respect to venæsection, contraindicates its use, in certain cases and constitutions. Even the *prejudices* of the sick are not to be contemned, or opposed

opposed with harshness. For though silenced by authority, they will operate secretly and forcibly on the mind, creating fear, anxiety, and watchfulness.

IV. As misapprehension may magnify real evils, or create imaginary ones, no *discussion* concerning the nature of the case should be entered into before the patients, either with the house surgeon, the pupils of the hospital, or any medical visitor.

V. In the large wards of an Infirmary the patients should be interrogated concerning their complaints, in a *tone of voice* which cannot be *overheard*. *Secrecy*, also, when required by peculiar circumstances, should be strictly observed. And females should always be treated with the most scrupulous *delicacy*. To neglect or to sport with their feelings is cruelty; and every wound thus inflicted tends to produce a callousness of mind, a contempt of decorum, and an insensibility to modesty and virtue. Let these considerations be forcibly and repeatedly urged on the hospital pupils.

VI. The *moral* and *religious influence* of sickness is so favourable to the best interests of men and of society, that it is justly regarded as an  
important

important object in the establishment of every hospital. The *institutions* for promoting it should, therefore, be encouraged by the physicians and surgeons, whenever seasonable opportunities occur. And by pointing out these to the officiating clergyman, the sacred offices will be performed with propriety, discrimination, and greater certainty of success. The character of a physician is usually remote either from superstition, or enthusiasm: And the aid, which he is now exhorted to give, will tend to their exclusion from the sick wards of the hospital, where their effects have often been known to be not only baneful, but even fatal.

VII. It is one of the privileges which softens the lot of the poor, that they are exempt from the sollicitudes attendant on the disposal of property. Yet there are exceptions to this observation: And it may be necessary that a hospital patient, on the bed of sickness and death, should be reminded, by some friendly monitor, of the importance of a *last will* and *testament* to his wife, children, or relatives, who otherwise, perhaps, might be deprived of his effects, of his expected prize money, or of some future residuary legacy. This kind office will be best performed by the house-surgeon, whose frequent attendance on the sick diminishes their reserve, and entitles him to their



their familiar confidence. And he will doubtless regard the performance of it as a duty. For whatever is right to be done, and cannot by another be so well done, has the full force of moral and personal obligation.

VIII. The physicians and surgeons should not suffer themselves to be restrained, by parsimonious considerations, from prescribing *wine*, and *drugs* even of *high price*, when required in diseases of extraordinary malignity and danger. The efficacy of every medicine is proportionate to its purity and goodness; and on the degree of these properties, *cæteris paribus*, both the cure of the sick, and the speediness of its accomplishment must depend. But when drugs of inferior quality are employed, it is requisite to administer them in larger doses, and to continue the use of them a longer period of time; circumstances which more than counterbalance any savings in their price. If the case, however, were far otherwise, no œconomy, of a fatal tendency, ought to be admitted into institutions, founded on principles of the purest beneficence, and which, in this age and country, when well conducted, can never want contributions adequate to their liberal support.

IX. The

IX. The medical gentlemen, of every charitable institution, are in some degree responsible for, and the guardians of, the honour of each other. No physician or surgeon, therefore, should *reveal* occurrences in the hospital, which may injure the reputation of any one of his colleagues; except under the restriction contained in the succeeding article.

X. No *professional charge* should be made by a physician or surgeon, either publicly or privately, out of the hospital, against any associate, without previously laying the complaint before the gentlemen of the faculty belonging to the institution, that they may judge concerning the reasonableness of its grounds; and the proper measures to be adopted.

XI. A proper *discrimination* being established in all hospitals between the *medical* and *chirurgical cases*, it should be faithfully adhered to, by the physicians and surgeons, on the admission of patients.

XII. Whenever cases occur, attended with circumstances not heretofore observed, or in which the ordinary modes of practice have been attempted without success, it is for the public good, and in an especial degree advantageous to the  
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the poor, who, being the most numerous class of society, are the greatest beneficiaries of the healing art, that *new remedies* and *new methods of chirurgical treatment* should be devised. But in the accomplishment of this salutary purpose, the gentlemen of the faculty should be scrupulously and conscientiously governed by sound reason, just analogy, or well authenticated facts. And no such trials should be instituted, without a previous consultation of the physicians or surgeons, according to the nature of the case.

XIII. To further professional improvement, a friendly and unreserved *intercourse* should subsist between the gentlemen of the faculty, with a free communication of whatever is extraordinary or interesting in the course of their hospital practice. And an *account* of every *case* or *operation*, which is rare, curious, or instructive, should be drawn up by the physician or surgeon, to whose charge it devolves, and entered in a register, kept for the purpose, but open only to the physicians and surgeons of the charity.

XIV. *Hospital registers* usually contain only a simple report of the number of patients admitted and discharged. By adopting a more comprehensive plan, they might be rendered subservient to medical science, and beneficial to  
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mankind. The following sketch is offered, with deference, to the gentlemen of the faculty. Let the register consist of three tables; the first specifying the number of patients admitted, cured, relieved, discharged, or dead; the second the several diseases of the patients, with their events; the third the sexes and ages of the patients. The ages should be reduced into classes; and the tables adapted to the four divisions of the year. By such an institution, the increase or decrease of sickness; the attack, progress, and cessation of epidemics; the comparative healthiness of different situations, climates, and seasons; the influence of particular trades and manufactures on health and life; with many other curious circumstances, not more interesting to physicians than to the community, would be ascertained with sufficient precision.

XV. By the adoption of the *register*, recommended in the foregoing article, physicians and surgeons would obtain a clear insight into the comparative success of their hospital and private practice; and would be incited to a diligent investigation of the causes of such difference. In particular diseases it will be found to subsist in a very remarkable degree: And the discretionary power of the physician or surgeon, in the admission of patients, could not be exerted with  
more

more justice or humanity, than in refusing to consign to lingering suffering, and almost certain death, a numerous class of patients, inadvertently recommended as objects of these charitable institutions. “ In judging of diseases with regard  
 “ to the propriety of their reception into hos-  
 “ pitals,” says an excellent writer, “ the following  
 “ general circumstances are to be considered.

“ Whether they be capable of speedy relief;  
 “ because, as it is the intention of charity to  
 “ relieve as great a number as possible, a quick  
 “ change of objects is to be wished; and also  
 “ because the inbred disease of hospitals will  
 “ almost inevitably creep, in some degree, upon  
 “ one who continues a long time in them, but  
 “ will rarely attack one, whose stay is short.

“ Whether they require in a particular man-  
 “ ner the superintendance of skilful persons,  
 “ either on account of their acute and dangerous  
 “ nature, or any singularity or intricacy attend-  
 “ ing them, or erroneous opinions prevailing  
 “ among the common people concerning their  
 “ treatment.

“ Whether they be contagious, or subject in  
 “ a peculiar degree to taint the air, and gene-  
 “ rate pestilential diseases.

“ Whether a fresh and pure air be peculiarly  
“ requisite for their cure, and they be remarkably  
“ injured by any violation of it.”\*

XVI. But no precautions relative to the reception of patients, who labour under maladies incapable of relief, contagious in their nature, or liable to be aggravated by confinement in an impure atmosphere, can obviate the evils arising from *close wards*, and the false œconomy of crowding a number of persons into the least possible space. There are inbred diseases which it is the duty of the physician and surgeon to prevent, as far as lies in their power, by a strict and persevering attention to the whole medical polity of the hospital. This comprehends the discrimination of cases admissible, air, diet, cleanliness, and drugs; each of which articles should be subjected to a rigid scrutiny, at stated periods of time.

XVII. The establishment of a *committee* of the *gentlemen* of the *faculty*, to be held monthly, would tend to facilitate this interesting investigation, and to accomplish the most important objects of it. By the free communication of remarks, various improvements would be sug-

\* See Dr. Aikin's Thoughts on Hospitals, p. 21.

gested; by the regular discussion of them, they would be reduced to a definite and consistent form; and by the authority of united suffrages, they would have full influence over the governors of the charity. The exertions of individuals, however benevolent or judicious, often give rise to jealousy; are opposed by those who have not been consulted; and prove inefficient, by wanting the collective energy of numbers.

XVIII. The harmonious intercourse, which has been recommended to the gentlemen of the faculty, will naturally produce *frequent consultations*, viz. of the physicians on medical cases, of the surgeons on, chirurgical cases, and of both united in cases of a compound nature, which falling under the department of each, may admit of elucidation by the reciprocal aid of the two professions.

XIX. In consultations on medical cases, the junior physician present should *deliver his opinion* first, and the others in succession, according to seniority: The same order should be observed in chirurgical cases; and a majority should be decisive in both: But if the numbers be equal, the decision should rest with the physician or surgeon, under whose care the patient is placed. No decision, however, should restrain the acting  
practitioner

practitioner from making such variations in the mode of treatment, as future contingencies may require, or a farther insight into the nature of the disorder may shew to be expedient.

XX. In consultations on mixed cases, the junior surgeon should *deliver his opinion* first, and his brethren afterwards in succession, according to seniority. The junior physician present should deliver his opinion after the senior surgeon; and the other physicians in the order above prescribed.

XXI. In every consultation, the case to be considered should be *concisely stated* by the physician or surgeon, who requests the aid of his brethren. The opinions relative to it should be delivered with brevity, according to the preceding arrangement, and the decisions collected in the same order.—The order of seniority, among the physicians and surgeons, may be regulated by the dates of their respective appointments in the hospital.

XXII. Due *notice* should be given of a consultation, and no person admitted to it, except the physicians and surgeons of the hospital, and the house surgeon, without the unanimous consent of  
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the gentlemen present. If an examination of the patient be previously necessary, the particular circumstances of danger or difficulty should be carefully concealed from him, and every precaution used to guard him from anxiety or alarm.

XXIII. No important *operation* should be determined upon, without a consultation of the physicians and surgeons, and the acquiescence of a majority of them. Twenty-four hours notice should be given of the proposed operation, except in dangerous accidents, or when peculiar circumstances occur, which may render delay hazardous. The presence of a *spectator* should not be allowed during an operation, without the express permission of the operator. All extra-official interference in the management of it should be forbidden. A decorous *silence* ought to be observed. It may be humane and salutary, however, for one of the attending physicians or surgeons to speak occasionally to the patient; to comfort him under his sufferings; and to give him assurance, if consistent with truth, that the operation goes on well, and promises a speedy and successful termination.\*

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\* The substance of the five preceding articles, (XIX. XX. XXI. XXII. XXIII.) was suggested by Dr. Ferriar and Mr. Simmons,

As a Hospital is the best school for practical surgery, it would be liberal and beneficial to invite, in rotation, two surgeons of the town, who do not belong to the institution, to be present at each operation.

XXIV. It is an established usage, in some hospitals, to have a *stated day* in the week for the performance of operations. But this may occasion improper delay, or equally unjustifiable anticipation. When several operations are to take place in succession, one patient should not have his mind agitated by the knowledge of the sufferings of another. The surgeon should put on a fresh apron, whenever it is besmeared; and the table and instruments should be freed from all marks of blood, and every thing that may excite terror.

XXV. DISPENSARIES afford the widest sphere for the treatment of diseases, comprehending, not only such as ordinarily occur, but those which are so infectious, malignant, and fatal, as to be excluded from admission into infirmaries. Happily, also, they neither tend to

Simmons, at the time when I was desired to frame a code of rules for the Manchester Infirmary. The alterations, now made, are intended to adapt them to general use.

counteract

counteract that spirit of independance, which should be sedulously fostered in the poor, nor to preclude the practical exercise of those relative duties, the "charities of father, son, and brother," which constitute the strongest moral bonds of society. Being institutions less splendid and expensive than hospitals, they are well adapted to towns of moderate size; and might even be established, without difficulty, in populous country districts. Physicians and surgeons, in such situations, have generally great influence: And it would be truly honourable to exert it in a cause subservient to the interests of medical science, of commerce, and of philanthropy.

The duties which devolve on gentlemen of the faculty, engaged in the conduct of Dispensaries, are so nearly similar to those of hospital physicians and surgeons, as to be comprehended under the same professional and moral rules. But greater *authority* and greater *condescension* will be found requisite in domestic attendance on the poor. And human nature must be intimately studied, to acquire that full ascendancy over the prejudices, the caprices, and the passions of the sick, and of their relatives, which is essential to medical success.

XXVI. Hospitals, appropriated to particular maladies, are established in different places, and claim both the patronage and the aid of the gentlemen of the faculty. To an ASYLUM for FEMALE PATIENTS, labouring under SYPHILIS, it is to be lamented that discouragements have been too often and successfully opposed. Yet whoever reflects on the variety of diseases to which the human body is incident, will find that a considerable part of them are derived from immoderate passions, and vicious indulgences. Sloth, intemperance, and irregular desires are the great sources of evil, which contract the duration, and imbitter the enjoyment of life. But humanity, whilst she bewails the vices of mankind, incites us to alleviate the miseries which flow from them. And it may be proved that a LOCK HOSPITAL is an institution founded on the most benevolent principles, consonant to sound policy, and favourable to reformation and to virtue. It provides relief for a painful and loathsome distemper, which contaminates, in its progress, the innocent as well as the guilty, and extends its baneful influence to future generations. It restores to virtue and to religion those votaries whom pleasure has seduced, or villany betrayed; and who now feel, by sad experience, that ruin, misery, and disgrace *are the wages of sin*. Over such objects pity sheds the generous tear; au-

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sterity softens into forgiveness; and benevolence expands at the united pleas of frailty, penitence, and wretchedness.\*

No *peculiar rules* of conduct are requisite in the medical attendance on LOCK HOSPITALS. But as these institutions must, from the nature of their object, be in a great measure shut from the inspection of the public, it will behove the faculty to consider themselves as responsible, in a particular degree, for their right government; that the moral, no less than the medical purposes of such establishments, may be fully answered. The strictest decorum should be observed in the conduct towards the female patients; no young pupils should be admitted into the house; every ministering office should be performed by nurses properly instructed; and books adapted to the patients should be put into their hands, and given them on their discharge. To provide against the danger of urgent want, a small sum of money, and decent clothes should at this time be dispensed to them; and, when practicable, some mode should be pointed out of obtaining a reputable livelihood.

\* See two Reports, intended to promote the establishment of a Lock Hospital in Manchester, in the year 1774, and inserted in the author's *Essays, Medical, Philosophical, and Experimental*.

XXVII. ASYLUMS for INSANITY possess accommodations and advantages, of which the poor must, in all circumstances, be destitute; and which no private family, however opulent, can provide. Of these schemes of benevolence all classes of men may have equal occasion to participate the benefits; for human nature itself becomes the mournful object of such institutions. Other diseases leave man a rational and moral agent, and sometimes improve both the faculties of the head, and the affections of the heart. But lunacy subverts the whole rational and moral character; extinguishes every tender charity; and excludes the degraded sufferer from all the enjoyments and advantages of social intercourse. Painful is the office of a physician, when he is called upon to minister to such humiliating objects of distress: Yet great must be his felicity, when he can render himself instrumental, under providence, in the restoration of reason, and in the renewal of the lost image of God. Let no one, however, promise himself this divine privilege, if he be not deeply skilled in the philosophy of human nature. For though casual success may sometimes be the result of empirical practice, the *medicina mentis* can only be administered with steady efficiency by him, who, to a knowledge of the animal œconomy, and of the physical causes which derange or regulate its movements,

unites

unites an intimate acquaintance with the laws of association ; the controul of fancy over judgment ; the force of habit ; the direction and comparative strength of opposite passions ; and the reciprocal dependances and relations of the moral and intellectual powers of man.

XXVIII. Even thus qualified with the prerequisite attainments, the physician will find that he has a new region of medical science to explore. For it is a circumstance to be regretted, both by the faculty and the public, that the various diseases which are classed under insanity, remain less understood than any others with which mankind are visited. Hospital institutions furnish the best means of acquiring more accurate knowledge of their causes, nature, and cure. But this information cannot be attained, to any satisfactory extent, by the ordinary attention to single and unconnected cases. The synthetic plan should be adopted ; and a regular *journal* should be kept of every species of the malady which occurs, arranged under proper heads, with a full detail of its rise, progress, and termination ; of the remedies administered, and of their effects in its several stages. The age, sex, occupation, mode of life, and if possible hereditary constitution of each patient should be noted : And when the event proves fatal, the brain, and other organs affected

affected should be carefully examined, and the appearances on dissection minutely inserted in the journal. A register like this, in the course of a few years, would afford the most interesting and authentic documents, the want of which, on a late melancholy occasion, was felt and regretted by the whole kingdom.

XXIX. Lunatics are, in a great measure, secluded from the observation of those who are interested in their good treatment; and their complaints of ill-usage are so often false or fanciful, as to obtain little credit or attention, even when well founded. The physician, therefore, must feel himself under the strictest obligation of honour, as well as of humanity, to secure to these unhappy sufferers all the *tendernefs* and *indulgence*, compatible with steady and effectual government.

XXX. Certain cases of *mania* seem to require a *boldness of practice*, which a young physician of sensibility may feel a reluctance to adopt. On such occasions he must not yield to timidity, but fortify his mind by the counsels of his more experienced brethren of the faculty. Yet with this aid, it is more consonant to sound probity to err on the side of caution than of temerity.



Hospitals for the small-pox, for inoculation, for cancers, &c. &c. are established in different places; but require no professional duties, which are not included under, or deducible from, the precepts already delivered.

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## SECT. II.

### OF PROFESSIONAL CONDUCT IN PRIVATE, OR GENERAL PRACTICE.

I. THE *moral rules of conduct*, prescribed towards hospital patients, should be fully adopted in private or general practice. Every case, committed to the charge of a physician or surgeon, should be treated with attention, steadiness, and humanity: Reasonable indulgence should be granted to the mental imbecility and caprices of the sick: Secrecy and delicacy, when required by peculiar circumstances, should be strictly observed. And the familiar and confidential intercourse, to which the faculty are admitted in their professional visits, should be used with discretion, and with the most scrupulous regard to fidelity and honour.

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II. The strictest *temperance* should be deemed incumbent on the faculty; as the practice both of physic and surgery at all times requires the exercise of a clear and vigorous understanding: And on emergencies, for which no professional man should be unprepared, a steady hand, an acute eye, or an unclouded head, may be essential to the well being, and even to the life, of a fellow-creature. Philip of Macedon reposed with entire security on the vigilance and attention of his General Parmenio. In his hours of mirth and conviviality he was wont to say, "Let us drink, my friends; we may do it with safety, for Parmenio never drinks!" The moral of this story is sufficiently obvious when applied to the faculty; but it should certainly be construed with great limitation by their patients.

III. A physician should not be forward to make gloomy prognostications; because they favour of empiricism, by magnifying the importance of his services in the treatment or cure of the disease. But he should not fail, on proper occasions, to give to the friends of the patient, timely notice of danger, when it really occurs, and even to the patient himself, if absolutely necessary. This office, however, is so peculiarly alarming, when executed by him, that it ought to be declined, whenever it can be assigned to another person of sufficient

sufficient judgment and delicacy. For the physician should be the minister of hope and comfort to the sick ; that by such cordials to the drooping spirit, he may smooth the bed of death ; revive expiring life ; and counteract the depressing influence of those maladies, which rob the philosopher of fortitude, and the christian of consolation.

IV. *Officious interference*, in a case under the charge of another, should be carefully avoided. No meddling inquiries should be made concerning the patient ; no unnecessary hints given, relative to the nature or treatment of his disorder ; nor any selfish conduct pursued, that may directly or indirectly tend to diminish the trust reposed in the physician or surgeon employed. Yet though the character of a professional busy-body, whether from thoughtlessness or craft, is highly reprehensible, there are occasions which not only justify, but require a spirited interposition. When artful ignorance grossly imposes on credulity ; when neglect puts to hazard an important life ; or rashness threatens it with still more imminent danger ; a medical neighbour, friend, or relative, apprized of such facts, will justly regard his interference as a duty. But he must be careful that the information, on which he acts, is well founded ; that his motives are pure and honourable ; and that his judgment of the mea-

tures pursued is built on experience and practical knowledge, not on speculative or theoretical differences of opinion. The particular circumstances of the case will suggest the most proper mode of conduct. In general, however, a personal and confidential application to the gentleman of the faculty concerned should be the first step taken, and afterwards, if necessary, the transaction may be communicated to the patient or to his family.

V. When a physician or surgeon is called to visit a patient, who has been before under the care of another gentleman of the faculty, a consultation with him should be requested, if he live in the same town: His practice, also, should be treated with candour, and even justified, so far as probity and truth will permit. For the want of success in the primary treatment of a case is no impeachment of professional skill or knowledge; and it often serves to throw light on the nature of a disease, and to suggest to the subsequent practitioner more appropriate means of relief.

VI. In large and opulent towns, the *distinction* between the *provinces* of *physic* and *surgery* should be steadily maintained. This distinction is sanctioned both by reason and experience. It is founded on the nature and objects of the two professions;

professions; on the education and acquirements requisite for their most beneficial and honourable exercise; and tends to promote the complete cultivation and advancement of each. For the division of skill and labour is no less advantageous in the liberal than in the mechanic arts: And both physic and surgery are so comprehensive, and yet so far from perfection, as separately to give full scope to the industry and genius of their respective professors. Experience has fully evinced the benefits of the discrimination recommended, which is established in every well regulated hospital, and is thus expressly authorized by the faculty themselves, and by those who have the best opportunities of judging of the proper application of the healing art. No physician or surgeon, therefore, should adopt more than one denomination, nor assume any rank or privileges different from those of his order.

VII. *Consultations* should be *promoted*, in difficult or protracted cases, as they give rise to confidence, energy, and more enlarged views in practice. On such occasions no rivalry or jealousy should be indulged: Candour, probity, and all due respect should be exercised towards the physician or surgeon first engaged: And as he may be presumed to be best acquainted with the patient and with the family, he should deliver all

the medical directions agreed upon, though he may not have precedency in seniority or rank. It should be the province, however, of the senior physician, first to propose the necessary questions to the sick, but without excluding his associate from the privilege of making farther inquiries, to satisfy himself, or to elucidate the case.

VIII. As circumstances sometimes occur to render a *special consultation* desirable, when the continued attendance of another physician or surgeon might be objectionable to the patient, the gentleman of the faculty, whose assistance is required, in such cases, should pay only two or three visits; and sedulously guard against all future unsolicited interference. For this consultation a double gratuity may reasonably be expected from the patient, as it will be found to require an extraordinary portion both of time and attention.

IX. *Theoretical discussions* should be avoided in consultations, as occasioning perplexity and loss of time. For there may be much diversity of opinion, concerning speculative points, with perfect agreement in those modes of practice, which are founded not on hypothesis, but on experience and observation.

X. The

X. The rules, prescribed for hospital consultations, may be adopted in private or general practice.\* And the *seniority* of a physician may be determined by the period of his public and acknowledged practice as a physician, and that of a surgeon by the period of his practice as a surgeon, in the place where each resides. This arrangement, being clear and obvious, is adapted to remove all grounds of dispute amongst medical gentlemen: And it secures the regular continuance of the order of precedency, established in every town, which might otherwise be liable to troublesome interruptions by new settlers, perhaps not long stationary.

XI. A regular *academical education* furnishes the only presumptive evidence of professional ability, and is so honourable and beneficial that it gives a just claim to pre-eminence among physicians, in proportion to the degree in which it has been enjoyed and improved: Yet as it is not indispensably necessary to the attainment of knowledge, skill, and experience, they who have really acquired, in a competent measure, such qualifications, without its advantages, should not be fastidiously excluded from the privileges of fel-

\* See articles XIX. XX. XXI. section I.

lowship.

lowship. In consultations, especially, as the good of the patient is the sole object in view, and is often dependant on personal confidence, the aid of an intelligent practitioner ought to be received with candour and politeness, and his advice adopted, if agreeable to sound judgment and truth.

XII. *Punctuality* should be observed in the visits of the faculty, when they are to hold consultation together. But as this may not always be practicable, the physician or surgeon, who first arrives at the house of appointment, should wait five minutes for his associate, before his introduction to the patient, that the unnecessary repetition of questions may be avoided: No visits should be made but in concert, or by mutual agreement: No statement or discussion of the case should take place before the patient or his friends, except in the presence of each of the attending gentlemen of the faculty, and by common consent: And no *prognostications* should be delivered, which are not the result of previous deliberation and concurrence.

XIII. *Visits* to the sick should not be *unseasonably repeated*; because, when too frequent, they tend to diminish the authority of the physician, to produce instability in his practice, and to give  
rise



rife to fuch occasional indulgences, as are fubver-  
five of all medicinal regimen.

Sir William Temple has asserted, that “ an  
“ honeft phyfician is excufed for leaving his pa-  
“ tient, when he finds the difeafe growing def-  
“perate, and can, by his attendance, expect only  
“ to receive his fees, without any hopes or  
“ appearance of deferving them.” But this alle-  
gation is not well founded: For the offices of a  
phyfician may continue to be highly ufe-  
ful to the patient, and comforting to the relatives  
around him, even in the laft period of a fatal ma-  
lady; by obviating defpair, by alleviating pain,  
and by foothering mental anguifh. To decline  
attendance, under fuch circumftances, would be  
facrificing, to fanciful delicacy, and miftaken  
liberality, that moral duty which is independent  
of, and far fuperior to, all pecuniary appreciation.

XIV. Whenever a phyfician or furgeon  
*officiates* for another, who is fick or abfent, during  
any confiderable length of time, he fhould re-  
ceive the fees accruing from fuch additional  
practice: But if this fraternal act be of fhort  
duration, it fhould be gratuitoufly performed;  
with an obfervance always of the utmoft delicacy  
towards the intereft of any other member of the  
profeflion, who may be connected with the  
family, on which attendance is given.

XV. Some

XV. Some general rule should be adopted, by the faculty, in every town, relative to the *pecuniary acknowledgments* of their patients; and it should be deemed a point of honour to adhere to this rule, with as much steadiness, as varying circumstances will admit. For it is obvious that a medium fee, as suited to the general rank of patients, must be an inadequate gratuity from the rich, who often require attendance not absolutely necessary; and yet too large to be expected from that class of citizens, who would feel a reluctance in calling for assistance, without making some decent and satisfactory retribution.

But in the consideration of fees, let it ever be remembered, that though mean ones from the affluent are both unjust and degrading, yet the characteristical beneficence of the profession is inconsistent with sordid views and avaricious rapacity. To a young physician it is of great importance to have clear and definite ideas of the ends of his profession; of the means for their attainment; and of the comparative value and dignity of each. Wealth, rank, and independence, with all the benefits resulting from them, are the primary ends which he holds in view; and they are interesting, wise, and laudable. But knowledge, benevolence, and active virtue,  
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the means to be adopted in their acquisition are of still higher estimation. And he has the privilege and felicity of practising an art, even more intrinsically excellent in its mediate than in its ultimate objects. The former, therefore, have a claim to uniform pre-eminence.

XVI. All the members of the profession, including apothecaries, as well as physicians and surgeons, together with their wives and children, should be attended *gratuitously* by any one or more of the faculty whose assistance may be required. For as solicitude obscures the judgment, and is accompanied with timidity and irresolution, medical men, under the pressure of sickness, either as affecting themselves or their families, are peculiarly dependent upon each other. But visits should not be obtruded officiously; as such unasked civility may give rise to embarrassment, or interfere with that choice, on which confidence depends. Distant members of the faculty, when they request attendance, should be expected to defray the charges of travelling. And if their circumstances be affluent, a pecuniary acknowledgment should not be declined: For no obligation ought to be imposed, which the party would rather compensate than contract. This rule may be applied, *mutatis mutandis*, to medical attendance on the clergy.

XVII. As the first *consultation* by *letter* imposes much more trouble and attention than a personal visit, it is reasonable, on such an occasion, to expect a gratuity of double the usual amount. And this has been long the established practice of many respectable physicians. But a subsequent epistolary correspondence, on the further treatment of the same disorder, may justly be regarded in the light of ordinary attendance, and may be compensated, as such, according to the circumstances of the case, or of the patient.

XVIII. The use of *quack medicines* should be discouraged by the faculty, as disgraceful to the profession, injurious to health, and often destructive even of life. Patients, however, under lingering disorders, are sometimes obstinately bent on having recourse to such as they see advertised, or hear recommended, with a boldness and confidence, which no intelligent physician dares to adopt, with respect to the means that he prescribes. In these cases, some indulgence seems to be required to a credulity that is insurmountable: And the patient should neither incur the displeasure of the physician, nor be entirely deserted by him. He may be apprized of the fallacy of his expectations, whilst assured, at the same time, that diligent attention shall be paid to the process of the experiment he is so unadvisedly

edly making on himself, and the mischiefs, which may arise, obviated as timely as possible. Certain active preparations, the nature, composition, and effects of which are well known, ought not to be proscribed as quack medicines.

XIX. No physician or surgeon should dispense a secret *nostrum*, whether it be his invention, or exclusive property. For if it be of real efficacy, the concealment of it is inconsistent with beneficence and professional liberality. And if mystery alone give it value and importance, such craft implies either disgraceful ignorance, or fraudulent avarice.

XX. As diversity of opinion and opposition of interest, may in the medical, as in other professions, sometimes occasion *controversy*, and even *contention*; whenever such cases unfortunately occur, and cannot be immediately terminated, they should be referred to the arbitration of a sufficient number of physicians or of surgeons, according to the nature of the dispute; or to the two orders collectively, if belonging both to medicine and surgery. But neither the subject matter of such references, nor the adjudication, should be communicated to the public; as they may be personally injurious to the individuals concerned, and can hardly fail to hurt the general credit of the faculty.

## S E C T. III.

OF THE CONDUCT OF PHYSICIANS TOWARDS  
APOTHECARIES.

I. IN the present state of physic, in this country, where the profession is properly divided into three distinct branches, a connection peculiarly intimate subsists between the physician and the apothecary; and various obligations necessarily result from it. On the knowledge, skill, and fidelity of the apothecary depend, in a very considerable degree, the reputation, the success, and usefulness of the physician. As these qualities, therefore, justly claim his attention and encouragement, the possessor of them merits his respect and patronage.

II. The apothecary is, in almost every instance, the præcursor of the physician; and being acquainted with the rise and progress of the disease, with the hereditary constitution, habits, and disposition of the patient, he may furnish very important information. It is in general, therefore,

fore, expedient, and where health or life are at stake expediency becomes a moral duty, to confer with the apothecary, before any decisive plan of treatment is adopted, to hear his account of the malady, of the remedies which have been administered, of the effects produced by them, and of his whole experience concerning the *juvantia* and *lædentia* in the case. Nor should the future attendance of the apothecary be superseded by the physician: For if he be a man of honour, judgment, and propriety of behaviour, he will be a most valuable coadjutor through the whole course of the disorder, by his attention to varying symptoms; by the enforcement of medical directions; by obviating misapprehensions in the patient, or his family; by strengthening the authority of the physician; and by being at all times an easy and friendly medium of communication. To subserve these important purposes, the physician should occasionally make his visits in conjunction with the apothecary, regulating by circumstances the frequency of such interviews. If often repeated little substantial aid can be expected from the apothecary, because he will have no intelligence to offer which does not fall under the observation of the physician himself: Nor any opportunity of executing his peculiar trust, without becoming burdensome to  
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the patient by multiplied calls, and unseasonable assiduity.

III. This amicable *intercourse* and *co-operation* of the physician and apothecary, if conducted with the *decorum* and attention to *etiquette*, which should always be steadily observed by professional men, will add to the authority of the one, to the respectability of the other, and to the usefulness of both. The patient will find himself the object of watchful and unremitting care, and will experience that he is connected with his physician, not only personally, but by a sedulous representative and coadjutor. The apothecary will regard the free communication of the physician as a privilege and mean of improvement; he will have a deeper interest in the success of the curative plans pursued; and his honour and reputation will be directly involved in the purity and excellence of the medicines dispensed, and in the skill and care with which they are compounded.

The duty and responsibility of the physician, however, are so intimately connected with these points, that no dependence on the probity of the apothecary should prevent the occasional inspection of the drugs, which he prescribes. In London the law not only authorizes, but enjoins  
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a stated examination of the simple and compound medicines kept in the shops. And the policy that is just and reasonable in the metropolis, must be proportionally so in every provincial town, throughout the kingdom. Nor will any respectable apothecary object to this necessary office, when performed with delicacy and at seasonable times; since his reputation and emolument will be increased by it, probably in the exact *ratio* of professional merit and integrity, hereby discovered.

IV. When a physician is called to visit a patient in the country, he should not only be *minute* in his *directions*, but should *communicate* to the apothecary the *particular view*, which he takes of the *case*; that the indications of cure may be afterwards pursued with precision and steadiness; and that the apothecary may use the discretionary power committed to him, with as little deviation as possible from the general plan prescribed. To so valuable a class of men as the country apothecaries, great attention and respect is due. And as they are the guardians of health through large districts, no opportunities should be neglected of promoting their improvement, or contributing to their stock of knowledge, either by the loan of books, the direction of their studies, or by unreserved information on medical subjects.

subjects. When such occasions present themselves, the maxim of our judicious poet is strictly true,

----- The worst avarice is that of sense. POPE.

For practical improvements usually originate in towns, and often remain unknown or disregarded in situations, where gentlemen of the faculty have little intercourse, and where sufficient authority is wanting to sanction innovation.

V. It has been observed, by a political and moral writer of great authority, that “ apothecaries’ profit is become a bye-word, denoting something uncommonly extravagant. This great apparent profit, however, is frequently no more than the reasonable wages of labour. The skill of an apothecary is a much nicer and more delicate matter than that of any artificer whatever; and the trust which is reposed in him is of much greater importance. He is the physician of the poor in all cases, and of the rich when the distress or danger is not very great. His reward, therefore, ought to be suitable to his skill and his trust, and it arises generally from the price at which he sells his drugs. But the whole drugs which the best employed apothecary, in a large market town,  
“ will

“ will sell in a year, may not perhaps cost him  
“ above thirty or forty pounds. Though he  
“ should sell them, therefore, for three or four  
“ hundred, or a thousand per cent. profit, this  
“ may frequently be no more than the reasonable  
“ wages of his labour charged, in the only way  
“ in which he can charge them, upon the price  
“ of his drugs.”\* The statement here given exceeds the emoluments of the generality of apothecaries, in country districts. And a physician, who knows the education, skill, and persevering attention, as well as the sacrifice of ease, health, and sometimes even of life, which this profession requires, should regard it as a duty not to withdraw, from those who exercise it, any sources of reasonable profit, or honourable means of advancement in fortune. Two practices prevail in some places injurious to the interest of this branch of the faculty, and which ought to be discouraged. One consists in suffering prescriptions to be sent to the druggist, for the sake of a small saving in expence. The other in receiving an annual stipend, usually degrading in its amount and in the services it imposes, for being consulted on the slighter indispositions to which all families are incident, and which properly fall within the province of the apothecary.

\* See Smith's Wealth of Nations, book I. chap. x.

In the county of Norfolk, and in the city of London, benevolent institutions have been lately formed, for providing funds to relieve the widows and children of gentlemen of the faculty, and occasionally also members of the profession who become indigent. Such schemes merit the sanction and encouragement of every liberal physician and surgeon. And were they so extended, their usefulness would be greatly increased, and their permanency almost with certainty secured. Subscribers from every part of Great Britain should be admitted, if they offer satisfactory testimonials of their qualifications. One comprehensive establishment seems to be more eligible than many on a smaller scale. For it would be conducted with superior dignity, regularity, and efficiency; with fewer obstacles from interest, prejudice, or rivalry; with considerable saving in the aggregate of time, trouble, and expence; with more accuracy in the calculations relative to its funds, and consequently with the utmost practicable extension of its dividends.

## S E C T. IV.

OF THE KNOWLEDGE OF LAW REQUISITE FOR  
PHYSICIANS AND SURGEONS.

I. GENTLEMEN of the faculty of physic, by the authority of different parliamentary statutes, enjoy an exemption from serving on inquests or juries; from bearing armour; from being constables or church-wardens; and from all burdensome offices, whether leet or parochial. These privileges are founded on reasons highly honourable to medical men; and should operate as incentives to that diligent and assiduous discharge of professional duty, which the legislature has generously presumed to occupy the time and to employ the talents of physicians and surgeons, in some of the most important interests of their fellow citizens. It is perhaps on account of their being thus excused from many civil functions, that Sir William Blackstone, in his learned Commentaries, judges the study of the law to be less essential to them, than to any other class of men. He observes, that “there is no special

“ reason why gentlemen of the faculty of physic  
 “ should apply themselves to the study of the  
 “ law, unless in common with other gentlemen,  
 “ and to complete the character of general and  
 “ extensive knowledge, which this profession,  
 “ beyond others, has remarkably deserved.”\*

But I apprehend it will be found that physicians and surgeons are often called upon to exercise appropriate duties, which require not only a knowledge of the principles of jurisprudence, but of the forms and regulations adopted in our courts of judicature. The truth of this observation will appear from the following brief detail of some of the principal cases, in which the science of law is of peculiar importance to medical practitioners.

II. When a physician attends upon a patient, under circumstances of imminent danger, his counsel may be required about the expediency of a *last will* and *testament*. It behoves him, therefore, to know whether, in case of intestacy, the daughters, or younger children of the sick person would be legally entitled to no share of his fortune: Whether the fortune would be equally divided, when such equality would be improper or unjust: Whether diversity of claims and ex-

\* Vol. I. sect. I. introduction.

penfive litigations would ensue, without a will, from the nature of the property in question: And whether the creditors of the defunct would, by his neglect, be defrauded of their equitable claims. For it is a culpable deficiency in our laws that real estates are not subject to the payment of debts by simple contract, unless expressly charged with them by the last will and testament of the proprietor; although credit is often founded, as Mr. Paley well observes, on the possession of such estates. This excellent moralist adds, “ He, therefore, who neglects to make the  
“ necessary appointments for the payment of his  
“ debts, as far as his effects extend, sins in his  
“ grave; and if he omits this on purpose to de-  
“ feat the demands of his creditors, he dies with  
“ a deliberate fraud in his heart.”\*

Property is divided by the law into two species, *personal* and *real*; each requiring appropriate modes of transfer or alienation, with which a physician should be well acquainted. It may also be required of him to deliver an opinion, and even a solemn judicial evidence, concerning the *capacity* of his patient to make a *will*, a point sometimes of difficult and nice decision.

\* See Paley's Principles of Moral and Political Philosophy, book III. part I. chap. xxiji.

For various disorders obscure, without perverting, the intellectual faculties. And even in delirium itself there are lucid intervals, when the memory and judgment become sufficiently clear, accurate, and vigorous, for the valid execution of a testament. In such cases the will should commence with the signature of the testator, concluding with it also, if his hand be not, after continued mental exertions too tremulous for subscription; and it should be made with all possible conciseness, and expedition.\*

If the patient be surprized by sudden and violent sickness, the law authorizes a *nuncupative will*, in the disposal of personalty. But to guard against fraud, the testamentary words must be delivered with an explicit intention to bequeath; the will must be made at home, or among the testator's family and friends, unless by unavoidable accident; and also in his last sickness: For

\* "In the construction of the statute, 29 Car. II. c. 3. "it has been adjudged that the testator's name, written "with his own hand, at the beginning of the will, as I, "John Mills, do make this my last will and testament; "is a sufficient signing, without any name at the bottom, "though the other is the safer way." See Blackstone's Comment. book II. chap. xxiii.



if he recover, it is evident that time is given for a written will.\*

The law excludes from the privilege of making a will *madmen, idiots*, persons in their *dotage*, or those who have stupified their understandings by drunkenness. But there is a high degree of hypochondriacism, which not unfrequently falls under the cognizance of a physician, and on which he may be required to decide, whether it amounts to mental incapacity for the execution of a last will and testament. To define the precise boundaries of rationality is perhaps impossible; if it be true, according to Shakespear, that "the lunatic, the lover, and the poet are of imagination all compact." But a partially distempered fancy is known to subsist with general intelligence: And a man, like Mr. Simón Browne, believing the extinction of his rational soul by the judgment of God, may uniformly evince, in every other instance, very distinguished intellectual powers; and be capable of directing his concerns, and disposing of his property, with sufficient discretion. To preclude one, so affected, from being a testator, seems inconsistent either with wisdom or justice; especially if the will, which has been made, discover, in its essential parts, no traces of a disturbed

\* Id. Book II. c. 32.

imagination or unfound judgment. But whenever false ideas, of a *practical kind*, are so firmly united as to be constantly and invariably mistaken for truth, we properly denominate this unnatural alliance *INSANITY*. And if it give rise to a train of subordinate wrong associations, producing incongruity of behaviour, incapacity for the common duties of life, or unconscious deviations from morality and religion, *MADNESS* has then its commencement.\*

III. A lunatic, or *non compos mentis*, in the eye of the law, is one who has had understanding, but has lost it by disease, grief, or other accident. The king is the trustee for such unfortunate persons, appointed to protect their property, and to account to them, if they recover, for their revenues, or after their decease to their representatives. The Lord Chancellor, therefore, grants a commission to inquire into the state of mind of the insane person; and if he be found *non compos*, he usually commits the care of his person, with a suitable allowance for his maintenance, to some friend, who is then called his committee.† The physician, who has been

\* See the Author's Moral and Literary Dissertations, p. 127, second edit.

† See Blackstone's Comment. book I. chap. viii.

consulted about the case, will doubtless be called upon to deliver an opinion concerning his patient. And before he becomes accessory to his deprivation, as it were, of all legal existence, he will weigh attentively the whole circumstances of the disorder; the original cause of it; the degree in which it subsists; its duration; and probable continuance. For if the malady be not fixed, great, and permanent, this solemn act of law must be deemed inexpedient, because it cannot be reversed without difficulty. And when insanity has been once formally declared, there may be grounds of apprehension that the party will be consigned to neglect and oblivion. With regard to the waste or alienation of property by the person thus afflicted, little risque is incurred, if he be put under the ordinary restraint of a proper curator. For whilst his mind remains in the state of alienation, he is incapable of executing any act with validity; and the next heir, or other person interested, may set it aside, on the plea of his incapacity. But the use of guardians or committees of a lunatic is chiefly to renew, in his right, under the directions of the court of chancery, any lease for lives or years, and to apply the profits for the benefit of the insane person, of his heirs, or executors.

IV. In the case of *sudden death*, the law has made provision for examining into the cause of it, by the *coroner*, an officer appointed for the purpose, who is empowered to summon such evidence as is necessary, for the discharge of his inquisitorial and judicial functions. On these occasions, the attendance of a physician or surgeon may often be required, who should be qualified to give testimony consonant to legal, as well as to professional knowledge. To this end, he must not only be acquainted with the signs of natural death, but also of those which occur, when it is produced by accident or violence. And he should not be a stranger to the several distinctions of homicide, established in our courts of judicature. For the division of this act into *justifiable*, *excusable*, and *felonious*, will aid his investigation, and give precision to the opinion which he delivers.

V. When a crime, which the law has adjudged to be capital, is attempted to be committed by force, the resistance of such force, even so as to occasion the death of the offender, is deemed *justifiable homicide*. Mr. Locke, in his *Essay on Government*, carries this doctrine to a much greater extent; asserting that “all manner of force, without a right, upon a man’s person, puts him in a state of war with the aggressor,  
“ and

“ and of consequence, being in such a state of war, “ he may lawfully kill him that puts him under “ this unnatural restraint.”\* But Judge Blackstone considers this conclusion as applicable only to a state of uncivilized nature; and observes, that the law of England is too tender of the public peace, too careful of the lives of the subjects, to adopt so contentious a system; nor will suffer with impunity any crime to be *prevented* by death, unless the same, if committed, would also be punished by death.†

VI. With cases of justifiable homicide, however, gentlemen of the faculty are seldom likely to be professionally concerned. But *excusable homicide* may frequently fall under their cognizance, and require their deliberate attention; and accurate investigation. It is of two sorts; either *per infortunium*, by misadventure; or *se defendendo*, upon a principle of self-preservation. Death may be the consequence of a lawful act, done without any intention of hurt. Thus if an officer, in the correction of a soldier by the sentence of a court martial, happens to occasion his death, it is only misadventure; the punishment being lawful.

\* Essay on Government, part II. ch. iii.

† Blackstone's Comment. book IV. ch. xiv.

But if the correction be unwarrantably severe, either in the manner, the instrument, or the quantity of punishment, and death ensues, the offender is at least guilty of manslaughter, and in some circumstances, of murder. A surgeon, therefore, is usually present, when soldiers are chastized with the lash; and on his testimony must depend the justification of the mode and degree of punishment inflicted. When medicines administered to a sick patient, with an honest design, to produce the alleviation of his pain, or cure of his disease, occasion death, this is misadventure, in the view of the law; and the physician or surgeon, who directed them, is not liable to punishment criminally, though a civil action might formerly lie for neglect or ignorance. But it hath been holden that such immunity is confined to *regular* physicians and surgeons. Sir Matthew Hale, however, justly questions the legality of this determination; since physic and salves were in use; before licensed physicians and surgeons. “Wherefore he treats the doctrine  
“ as apocryphal, and fitted only to qualify and  
“ flatter licenciates and doctors in physic; though  
“ it may be of use to make people cautious how  
“ they meddle too much in so dangerous an em-  
“ ployment.” The college of physicians, however, within their jurisdiction, which extends seven miles

miles round London, are vested by charter with the power of fine and imprisonment *pro mala praxi*. Yet Dr. Groenvelt, who was cited, in the year 1693, before the Censors of the College, and committed to Newgate, by a warrant from the president, for prescribing *cantbarides* in substance, was acquitted on the plea that bad practice must be accompanied with a bad intention, to render it criminal. This prosecution, whilst it ruined the doctor's reputation and injured his fortune, so that he is said to have died in want, excited general attention to the remedy, and afterwards established the use of it; though it must be acknowledged that his doses were too bold and hazardous. But whatever be the indulgence of the law towards medical practitioners, they are bound by a higher authority than that of the most solemn statute, not to exercise the healing art without due knowledge, tenderness, and discretion: And every rash experiment, every mistake, which originates either from inattention or defective education, is, in the eye of conscience, a crime both against God and man.

It must frequently devolve on the faculty to decide concerning the nature and effects of blows, strokes, or wounds inflicted, and how far the death of the sufferer is to be ascribed to them, or to some antecedent or subsequent disease. In  
homicide,

homicide, also, *se defendendo*, the manner and time of the defence are to be considered. For if the person assaulted falls upon the aggressor, when the fray is over and he is running away, this is revenge and not defence. And though no witnesses were present, the situation of the wound or of the blow would afford, if in the back of the assailant, presumptive evidence of *felonious homicide*.

VII. This crime, the most atrocious of all others, is considered by the law under the three heads of *suicide*, *manslaughter*, and *murder*, concerning each of which the faculty are occasionally obliged to give professional evidence. A *felo de se* is one who has deliberately put an end to his existence, or committed any unlawful malicious act, the immediate consequence of which proved death to himself. To constitute this act a crime, the party must have been of years of discretion, and in the possession of reason. A physician, therefore, may be called upon, by the coroner, to state his opinion of the mental capacity of the defunct. And the law will not authorize the plea, that every melancholic or hypochondriac fit deprives a man of the power of discerning right from wrong. Even if a lunatic kills himself in a lucid interval, Sir M. Hale affirms that he is a *felo de se*. And the physician, who has attended him,



him, is best qualified to judge of the degree, the duration, or periodical seasons of such returns of sanity. But there are cases of temporary distraction, when death may be rushed upon apparently with design, but really from the influence of terror, or the want of that presence of mind, which is necessary to the exercise of judgment, and the discrimination of actual from imaginary evil. Of this kind the reader will find an affecting instance, related by Dr. Hunter, in the *Medical Observations and Inquiries*, published by a Society of Physicians in London.\*

VIII. *Manlaughter* is defined “the unlawful killing of another, without malice, express or implied, which may be either voluntarily, upon a sudden heat; or involuntarily, but in the commission of some unlawful act.” Yet though this definition is delivered from Sir Matthew Hale, by the excellent commentator on the laws of England, so often quoted, it is not sufficiently precise and comprehensive. For when a person does an act lawful in itself, but which proves fatal to a fellow citizen, because done without due circumspection, it may, according to circumstances, be either misadventure, manslaughter, or murder. Thus when a work-

\* Vol. VI. p. 279.

man kills any one, by flinging down a stone or piece of timber into the street, if the accident be in a country village, where there are few passengers, and if he give warning by calling out to them, it is only misadventure: But if it be in London or other populous town, where persons are continually passing, it is manslaughter, though warning be loudly given: And it is murder, if he knows of their passing, and gives no warning at all; for this is malice against all mankind.\* On the like grounds we may reason concerning the cases of death, occasioned by drugs designed to produce abortion. This purpose is not always unlawful: For the configuration of the *pelvis*, in some females, is such as to render natural parturition impossible, or inevitably fatal. But even in such instances, the guilt of manslaughter may be incurred by ignorance of the drastic quality of the medicine prescribed, or want of due caution in the dose administered. And when no moral or salutary end is in view, the simple act itself, if fatal in the issue, falls under the denomination of murder.† “ If a woman be quick with child, “ and by a potion or otherwise killeth it in her “ womb, this is a great misprision, yet no murder:

\* Blackstone's Comment. book IV. ch. xiv.

† See Burn's Justice of Peace, vol. I. p. 216.

“ But

“ But if the child be born alive, and dieth of  
 “ the potion or other cause, this is murder.\*  
 The procuring of abortions was common  
 amongst the Romans ; and, it is said, was  
 liable to no penalty, before the reigns of Severus  
 and Antoninus. Even those princes made it  
 criminal only in the case of a married woman,  
 practising it to defraud her husband of the com-  
 forts of children, from motives of resentment.  
 For the *fœtus* being regarded as a portion of  
 the womb of the mother, she was supposed to  
 have an equal and full right over both. This  
 false opinion may have its influence in modern,  
 as well as in ancient times ; and false it must be  
 deemed, since no female can be privileged to  
 injure her own bowels, much less the *fœtus*,  
 which is now well known to constitute no part  
 of them. To extinguish the first spark of life  
 is a crime of the same nature, both against our  
 Maker and society, as to destroy an infant, a  
 child, or a man ; these regular and successive  
 stages of existence being the ordinances of God,  
 subject alone to his divine will, and appointed  
 by sovereign wisdom and goodness as the ex-  
 clusive means of preserving the race, and mul-  
 tiplying the enjoyments of mankind. Hence  
 the father of physic, in the oath enjoined on

\* Id. vol. II. p. 110.

his pupils, and which some universities now impose on their medical graduates, obliged them solemnly to abjure the practice of administering the *πεσσος φθοριος*. But in weighing the charge, against any person, of having procured an abortion, the methods employed should be attentively considered by the faculty; as this effect has often been ascribed to causes inadequate to its production. Even the pessary, so sanctimoniously forbidden by Hippocrates, has little of that real activity and power, which superstition has assigned to it.

IX. The law of England guards, with assiduous care, the lives of infants, when endangered by motives which counteract, and too often overbalance, the strong operation of maternal love. In cases of *bastardy*, therefore, it is declared, by a statute passed in the reign of James the first, that “ If any woman be delivered of  
 “ any issue of her body, male or female, which  
 “ being born alive, should by the laws of this  
 “ realm be a bastard, and she endeavour privately, either by drowning, or secret burying  
 “ thereof, or any other way, either by herself, or  
 “ the procuring of others, so to conceal the  
 “ death thereof, as that it may not come to light  
 “ whether it was born alive or not, but be concealed, she shall suffer death, as in case of murder,  
 “ der,

“der, except she can prove, by one witness at least, that the child was born dead.”\* This law, though humane in its principle, is much too severe in its construction. To give certainty to punishment, by facilitating conviction, is doubtless an essential object of jurisprudence. And it has been well observed, that the statute, which made the possession of the implements of coining a capital offence, by constituting such possession complete evidence of guilt, has proved the most effectual mean of enforcing the denunciation of law against this dangerous and tempting crime.† But the analogy, which the able moralist has drawn between this ordinance and that relating to bastardy, is not fully conclusive. For possession, in the former case, clearly implies a specific purpose, for which the legislature, with sufficient wisdom and justice, has provided a specific punishment. Whereas secrecy in the mother, concerning the death of her illegitimate offspring, hardly amounts to the lowest degree of presumptive evidence of felonious homicide. Gentlemen of the faculty have often melancholy experience of the distraction

\* Burn's Justice, vol. I. p. 216.

† See Paley's Moral and Political Philosophy, 4to. p. 350.

and misery, which females suffer under these unhappy circumstances. And when it becomes their painful office to deliver evidence, on such occasions, justice and humanity require, that they should scrutinize the whole truth, and *nothing extenuate nor set down aught in malice.*

“What is commonly understood to be the murder of a bastard child by the mother,” says Dr. Hunter, “if the real circumstances were fully known, would be allowed to be a very different crime in different circumstances. In some (it is to be hoped *rare*) instances, it is a crime of the very deepest dye. . . . . But, as well as I can judge, the greatest number of what are called murders of bastard children, are of a very different kind. The mother has an unconquerable sense of shame, and pants after the preservation of character: So far she is virtuous and amiable. She has not the resolution to meet and avow infamy. In proportion as she loses the hope either of having been mistaken with regard to pregnancy, or of being relieved from her terrors by a fortunate miscarriage, she every day sees her danger greater and nearer, and her mind overwhelmed with terror and despair. In this situation many of these women, who are afterwards accused of murder, would destroy themselves, if they did not know that such an action would  
“ infallibly

“ infallibly lead to an inquiry, which would pro-  
“ claim what they are so anxious to conceal. In  
“ this perplexity, and meaning nothing less than  
“ the murder of the infant, they are meditating  
“ different schemes for concealing the death of  
“ the child; but are wavering between difficul-  
“ ties on all sides, putting the evil hour off, and  
“ trusting too much to chance and fortune. In  
“ that state often they are overtaken before  
“ they expected; their schemes are frustrated;  
“ their distress of body and mind deprives them  
“ of all judgment and rational conduct; they are  
“ delivered by themselves wherever they happen  
“ to retire in their fright or confusion; some-  
“ times dying in the agonies of childbirth, and  
“ sometimes being quite exhausted they faint  
“ away, and become insensible of what is passing;  
“ and when they recover a little strength, find  
“ that the child, whether still-born or not, is  
“ completely lifeless. In such a case, is it to be  
“ expected, when it would answer no purpose,  
“ that a woman should divulge the secret? Will  
“ not the best dispositions of mind urge her to  
“ preserve her character? She will therefore  
“ hide every appearance of what has happened  
“ as well as she can, though if the discovery be  
“ be made, that conduct will be set down as a  
“ proof of her guilt.” . . . . . “ Here let us  
“ suppose a case, which every body will allow to  
“ be

“ be very possible. An unmarried woman, be-  
 “ coming pregnant, is striving to conceal her  
 “ shame, and laying the best scheme that she can  
 “ devise, for saving her own life and that of the  
 “ child, and at the same time concealing the  
 “ secret; but her plan is at once disconcerted by  
 “ her being taken ill by herself, and delivered of  
 “ a dead child. If the law punishes such a wo-  
 “ man with death for concealing her shame,  
 “ does it not require more from human nature,  
 “ than weak human nature can bear? In a case  
 “ so circumstanced, surely the only crime is the  
 “ having been pregnant, which the law does not  
 “ mean to punish with death; and the attempt  
 “ to conceal it by fair means should not be  
 “ punishable with death, as that attempt seems  
 “ to arise from a principle of virtuous shame.”\*

The observations, here quoted, have a just  
 claim to attention, from the extensive experience  
 which the author possessed, and still more from  
 his intimate knowledge of the female character.  
 Yet to the moral and political philosopher, Dr.  
 Hunter may appear to have exalted the sense of  
 shame into the principle of virtue; and to have  
 mistaken the great end of penal law, which is not  
 vengeance but the prevention of crimes. The

\* Med. Obs. and Inq. vol. VI. p. 271. et seq.

statute,



statute, indeed, which makes the concealment of the birth of a bastard child full proof of murder, confounds all distinctions of innocence and guilt, as such concealment, whenever practicable, would be the wish and act of all mothers, virtuous or vicious, under the same unhappy predicament. Law, however, which is the guardian and bulwark of the public weal, must maintain a steady, and even rigid watch, over the general tendencies of human actions: And when these are not only clearly understood, but interpreted according to the rules of wisdom and rectitude, that may justly be constituted a civil crime, which, if permitted, might give occasion to atrocious guilt, though in its own nature innocent. The measure of punishment, however, should be proportionate, as nearly as possible, to the temptation to offend, and to the kind and degree of evil produced by the offence. If inadequate to the former it will be nugatory; and if too severe for the latter, it will defeat itself, by furnishing a just plea for superseding its execution.\* A revision of our sanguinary statutes is much wanted; and it would be happy if means

\* “ L’atrocité des loix en empêche l’exécution.

“ Lorsque la peine est sans mesure, on est souvent obligé de lui préférer l’impunité.”

MONTESQUIEU.

could

could be devised of suppressing the punishment, by obviating the crime, when it is merely positive or municipal. This we have seen accomplished with respect to the coinage of money, by the simple introduction of a standard weight in the payment of gold. And a sagacious legislator might doubtless discover and adopt similar improvements, in other branches of penal jurisprudence.

Much observation is required to discriminate between a child still born, and one that has lived after birth only a short space of time. Various appearances, also, both internal and external, may be mistaken for marks of violent death. Even the swimming of the lungs in water, a test on which so much reliance is placed, will, on many occasions, be found fallacious. But these are points of professional science, which do not strictly fall under the subject of this section; and the reader is particularly referred to the paper already quoted, and also to the *Elementa Medicinæ Forensis* Job. Fred. Faselii; or to a valuable epitome of the same work in English by Dr. Farr.\*

\* Elements of Medical Jurisprudence: or a succinct and compendious Description of such Tokens in the Human Body, as are requisite to determine the Judgment of a Coroner, and of Courts of Law, in Cases of Divorce, Rape, Murder, &c. London, Becket, 1788.

X. *Duelling* is another species of felony, even though the consequences of it should not prove fatal: And gentlemen of the faculty are peculiarly interested in the knowledge of the laws relating to it; because they are not only liable to be summoned on the trial of the parties, if either or both of them be wounded, but are frequently professional attendants on them in the field of combat. It is astonishing that a practice, which originated in ages of Gothic ignorance, superstition, and barbarism, should be continued in the present enlightened period, though condemned by the ordinances of every state, and repugnant to the spirit and precepts of christianity. In the usages of the ancient Germans, evident traces of it may be discovered. But it was employed by them either as an appeal to the justice, or to the prescience of the Gods. Velleius Paterculus informs us, that questions, decided amongst the Romans by legal trial, were terminated amongst the Germans by arms or judicial combat.\* Tacitus describes it as a species of divination, by which the future events of important wars were explored. A captive from the enemy was compelled to fight with a man selected from their own nation. Each was accoutred with his proper weapons; and the

\* Vellei Paterculi, lib. II. cap. cxviii.

presage of success was determined by the issue of the battle.\* A law is quoted by Stiernhöök, which shews that judicial combat was at first appropriated to points respecting personal character, and that it was only subsequently extended to criminal cases, and to questions relative to property. The terms of the law are, "If any man shall say to another these reproachful words, 'you are not a man equal to other men,' or 'you have not the heart of a man,' and the other shall reply, 'I am a man as good as you,' let them meet on the highway. If he who first gave offence appear, and the person absent himself, let the latter be deemed worse than he was called; let him not be admitted to give evidence in judgment either for man or woman, and let him not have the privilege of making a testament. If the person offended appear, and he who gave the offence be absent, let him call upon the other thrice with a loud voice and make a mark upon the earth, and then let him who absented himself be deemed infamous, because he uttered words which he durst not support. If both shall appear properly armed, and the person offended shall fall in the combat, let a half compensation be paid for his death. But

\* Vide Tacit. de Situ, Morib. et Populis Germaniæ, sect. x.

if the person who gave the offence shall fall, let it be imputed to his own rashness. The petulance of his tongue hath been fatal to him. Let him lie in the field without any compensation being made for his death.\* Montefquieu, on the authority of Beaumanoir, whom he quotes with great respect, deduces the rise and formation of the articles, relative to the point of honour, from the following particular judicial usages. The accuser declared, in the presence of the judge, that such a person had committed such an action: The accused made answer that *he lied*, upon which the judge gave orders for the duel. Thus it became an established rule, that whenever the lie was given to a person, it was incumbent on him to fight. *Gentlemen* combated on horseback, completely armed. *Villeins* fought on foot, and with bastons. The baston, therefore, was regarded as an instrument of affront, because to strike a man with it was to treat him as a villein. For the like reason, a box on the ear or blow on the face were deemed contumelies, to be expiated with blood; since villeins alone were liable to receive such disgraceful blows, as it

\* Lex Uplandica apud Stiern. Robertson's History of Charles V. vol. I. note 22.

was peculiar to them to fight with their heads uncovered.\*

Practices like these were so congenial to the proud and martial spirit of the times, as well as to the superstition which prevailed, that they became universal throughout Europe. But it is evident that they could not fail to subvert the regular course of justice, diminish the authority of government, and violate the sacred ordinances of the church. For the clergy uniformly remonstrated against, and even anathematized them, as adverse to christianity; and the civil power frequently interposed, to set bounds to usages, which its authority was too feeble to suppress. Henry I. of England, in the twelfth century, prohibited trial by combat, in all questions concerning property of small value. Louis-VII. of France issued an edict to the same effect. St. Louis, who was a distinguished legislator, considering the rude age in which he reigned, attempted a more perfect jurisprudence, by substituting trial by evidence, in place of that by combat. And afterwards it became the policy of every monarch, who possessed power or talents, to explode this relic of Gothic barbarism. By degrees the practice became less and less frequent; courts of judicature acquired

\* See Montefquieu, Liv. XXVIII. c. xx.

an ascendancy; law was studied as a science, and administered with greater regularity; and the ferocious manners of the inhabitants of Europe yielded to the arts of peace, and to the benefits of social and civilized life. But an event occurred, in the year 1528, which both revived the practice of single combat, and gave a new form to it, more absurd and fatal. The political and personal enmity, which subsisted between the Emperor Charles V. and Francis I., led the former to commission the French herald, sent to him with a denunciation of war, to acquaint his sovereign, that he should from that time consider him not only as a base violator of public faith, but as a stranger to the honour and probity of a gentleman. Francis instantly sent back the herald, with a *cartel* of defiance, giving the emperor *the lie*, and challenging him to single combat. Charles accepted the challenge; but it being impracticable to settle the preliminaries, this romantic and ridiculous enterprize of course was never accomplished. The transaction, however, excited such universal attention, and reflected so much splendour and dignity on this novel mode of single combat, that every gentleman thought himself entitled, and even bound in honour to draw his sword, and to demand satisfaction of his adversary, for affronts trivial, and

and even imaginary.\* The best blood in Christendom was shed; personages of the first distinction were devoted to death; the ease, the familiarity, and the confidence of private intercourse were interrupted; and war itself was hardly more destructive to life, and to its dearest enjoyments, than this fatal and seductive frenzy.† Evils of such magnitude required adequate remedies, and all the terrors of law were every where employed to repress them. Sir Francis Bacon, when Attorney General, in the reign of James I., delivered a charge, before the court of star chamber, touching duels, which gives a clear and animated view of the important light in which they were then regarded. “The first motive,” he says,  
 “is

\* See Robertson’s History of Charles V. book V.

† The History of Lord Herbert of Cherbury, who lived in the reigns of Queen Elizabeth and James I., fully exemplifies the folly and danger of adopting false principles of honour. During the abode of this romantic nobleman at the Duke of Montmorencies, about twenty-four miles from Paris, it happened, one evening, that a daughter of the Duchesse de Ventadour, of about ten or eleven years of age, went to walk in the meadows, with his lordship and several other gentlemen and ladies. The young lady wore a knot of ribband on her head, which a French chevalier snatched away, and fastened to his hatband. He was desired to return it, but refused. The lady then requested Lord  
 Herbert



“ is a false and erroneous imagination of honour  
“ and credit ; and, therefore, the king, in his  
“ proclamation, doth most aptly call them *bewitch-*  
“ *ing duels*. For if one judge of it truly, it is no  
“ better than a forcery, that enchanteth the spirits  
“ of young men ; and a kind of fatanical illusion  
“ and apparition of honour against religion,  
“ against law, and against moral virtue. Here-  
“ unto may be added that men have almost lost  
“ the true notion and understanding of fortitude  
“ and valour. For fortitude distinguisheth of the  
“ grounds of quarrels whether they be just ; and  
“ not only so, but whether they be worthy ; and  
“ setteth a better price upon men’s lives than to  
“ bestow them idly : Nay it is weakness and  
“ disesteem of a man’s self, to put a man’s life  
“ upon such liedger performances : A man’s life is

Herbert to recover it for her. A race ensued ; and the chevalier, finding himself likely to be overtaken, made a sudden turn, and was about to deliver his prize to the young lady, when Lord Herbert seized his arm, and cried out, “ I give it you.” “ Pardon me,” said the lady, “ it is he who gives it me.” “ Madam,” replied Lord Herbert, “ I will not contradict you, but if the chevalier do not acknowledge that I constrain him to give the ribband, I will fight with him.” And the next day, he sent him a challenge, “ being bound thereto” says he, “ by the oath taken when I was made knight of the bath.” See the Life of Lord Herbert of Cherbury ; also Percival’s Moral and Lit. Dissert. p. 299. second edit.

“ not

“ not to be trifled away; it is to be offered up and  
 “ sacrificed to honourable services, public merits,  
 “ good causes, and noble adventures. It is in  
 “ expence of blood as it is in expence of money;  
 “ it is no liberality to make a profusion of money  
 “ upon every vain occasion; nor no more is it  
 “ fortitude to make effusion of blood, except the  
 “ cause be of worth.”\*

The decree of the Star Chamber against Priest  
 and Wright, the objects of Sir Francis Bacon's  
 charge, was, that they should both be com-  
 mitted to prison; that the former should be  
 fined £500, and the latter 500 marks, and  
 that at the next assizes they should publicly  
 acknowledge their high contempt of, and offence  
 against God, the king's majesty, and his laws,  
 shewing themselves penitent for the same.  
 Though this judgment appears to have been  
 founded in wisdom and equity, yet, happily  
 for our country, the court, which passed the sen-  
 tence, has been long suppressed; and we are  
 now governed not by arbitrary will, but by  
 known and fixed laws. Those which subsist  
 against duelling I shall quote from the authorities  
 of Foster, Blackstone, Hawkins, and Burn.  
 “ Deliberate duelling, if death ensueth, is in

\* Bacon's Works, 4to. Birch's edit. vol. II. p. 565.

“ the eye of the law murder; 'for duels are  
 “ generally founded in deep revenge; and though  
 “ a person should be drawn into a duel, not  
 “ upon a motive so criminal, but merely upon  
 “ the punctilio of what the swordsmen falsely  
 “ call honour, that will not excuse; for he, that  
 “ deliberately seeketh the blood of another upon  
 “ a private quarrel, acteth in defiance of all laws  
 “ human and divine.”\* “ Express malice is  
 “ when one, with a sedate deliberate mind and  
 “ formed design, doth kill another. This takes  
 “ in the case of deliberate duelling, where both  
 “ parties meet, avowedly, with an intent to  
 “ murder; thinking it their duty as gentlemen,  
 “ and claiming it as their right, to wanton with  
 “ their own lives and those of their fellow-crea-  
 “ tures, without any warrant or authority from  
 “ any power either human or divine, but in  
 “ direct contradiction to the laws both of God  
 “ and man. And, therefore, the law has justly  
 “ fixed the crime and punishment of murder on  
 “ them, and on their seconds also.”† “ The  
 “ law so abhors all duelling in cold blood, that  
 “ not only the principal who actually kills the  
 “ other, but also his seconds, are guilty of  
 “ murder, whether they fought or not: And it

\* Sir Michael Foster's Reports, 8vo. p. 297.

† Blackstone's Comment. book IV. chap. xiv.

“ is holden that the seconds of the party slain  
 “ are also guilty as accessaries.”\* From variations in the moral and intellectual character of man, it is impossible to ascertain the precise period, when the passions may be supposed to become cool, after having been violently agitated. Judgment, therefore, must be founded on the circumstances of deliberation, which are delivered in the course of evidence. In many cases, it has been determined that death, in consequence of an appointment and meeting, a few hours subsequent to the provocation, is murder.†

XI. Before a surgeon engages professionally to attend a duellist to the field of combat, it behoves him to consider well, not only how far he is about to countenance a deliberate violation of the duties of morality and religion; but whether, in the construction of law, he may not be deemed an aider and abettor of a crime, which involves in it such turpitude, that death is alike denounced against the principal and the accessory. Does he not voluntarily put himself into a predicament, similar, in many essential points, to that of the *second*, who is expressly condemned

\* 1 Hawkins 82; and Burn's Justice, vol. II. p. 509.

† See Legg's *ca Kelyng* 27. Eden's Principles of Penal Law, p. 224.

by the legislature of this country? Both are apprized of the purpose to commit an act of felony: Both take an interest in the circumstances attendant upon it: And both are present during the execution; the one to regulate its antecedents, the other to alleviate its consequences. But I suggest these considerations with much diffidence: And though I observe some passages, in Sir Michael Foster's Discourse concerning Accomplices, which seem to confirm them; yet candour obliges me to quote the following, apparently adverse, opinion of this excellent judge. "In order to render a  
 " person an accomplice and a principal in felony,  
 " he must be aiding and abetting at the fact,  
 " or ready to afford assistance, if necessary.  
 " And therefore if A happeneth to be present  
 " at a murder, for instance, and taketh no part  
 " in it, nor endeavoureth to prevent it, nor apprehendeth the murderer, nor levieth hue and  
 " cry after him, this strange behaviour of his,  
 " though highly criminal, will not of itself render  
 " him either principal or accessary."\*

But whatever be the objections against the attendance of a surgeon in the field of combat, they cannot be construed to extend to the afford-

\* Foster's Crown Law, 8vo. p. 350.

ing of all possible assistance, to any unfortunate sufferer, in an affair of honour; provided such assistance be not preconcerted, but required as in ordinary accidents or emergencies. For in the offices of the healing art, no discrimination can be made, either of occasions or of characters. And it must be acknowledged, that many of the victims of duelling have been men, from their talents and virtues, possessing the justest claim to assiduous and tender attention. That lives of such inestimable value to their friends, to their families, and to the public, should be at the mercy of any profligate rake, who wantonly gives affronts, or idly fancies he receives them, is a great aggravation of the folly, as well as of the guilt of duelling. This reflection seems to shew the propriety of a change in the penal code, respecting it; and that the punishment inflicted should be confined to the aggressor; strict inquiry into the circumstances of the case being previously made, by the coroner, or some magistrate authorized and bound to exercise this important trust. And he may, with reason, be regarded as the aggressor, who either violates the rules of decorum, by any unprovoked rudeness or insult; or who converts into an offence, what was intended only as convivial pleasantry.

XII. A physician has no special interest in an acquaintance with the statutes relative to duelling. But as he possesses the rank of a gentleman, both by his liberal education and profession, the *law of honour*, if that may be termed a law which is indefinite and arbitrary, has a claim to his serious study and attention. As a philosopher, also, it becomes him to trace its origin, and to investigate the principles on which it is founded: And as a moralist, duty calls upon him to counteract its baneful influence and ascendancy. For in principle, it is distinct from virtue; and as a practical rule, it extends only to certain formalities and decorums, of little importance in the transactions of life, and which are spontaneously observed by those, who are actuated with the true sense of propriety and rectitude. Genuine honour, in its full extent, may be defined a quick perception and strong feeling of moral obligation, in conjunction with an acute sensibility to shame, reproach, or infamy. In different characters, these constituent parts of the principle are found to exist in proportions so diversified, as sometimes to appear almost single and detached. The former always *aids and strengthens virtue*; the latter may occasionally *imitate her actions*,\* when fashion happily

\* Addison's Cato.

countenances,

countenances, or high example prompts to rectitude. But being connected, for the most part, with a jealous pride and capricious irritability, it will be more shocked with the *imputation*, than with the *commission* of what is wrong. And thus it will constitute that spurious honour, which, by a perversion of the laws of association, *puts evil for good and good for evil*; and under the sanction of a name, perpetrates crimes without remorse, and even without ignominy.\*

XIII. *Homicide by poison* is another very important object of medical jurisprudence. When it is the effect of inadvertency, or the want of adequate caution, in the use of substances dangerous to health and life, the law regards it as a misdemeanour: When it is the consequence of rashness, of wanton experiment, or of motives unjust though not malicious,† it becomes

\* See the Author's Mor. and Lit. Diff. p. 295.

† “ If an action unlawful in itself be done deliberately, and *with intention of mischief*, or great bodily harm to particulars, or of mischief indiscriminately, fall it where it may, and death ensue against or beside the original intention of the party, it will be murder. But if such *mischievous intention* doth not appear, which is matter of fact and *to be collected from circumstances*, and the act was done heedlessly and incautiously, it will be manslaughter; not accidental death, because the act which ensued was unlawful.” Foster, p. 261.

manslaughter.



manlaughter: And when the express purpose is to kill, by the means of some deleterious drug, it constitutes a most atrocious species of murder. In cases of this nature, the faculty are called upon to give evidence concerning the nature of the poison, the symptoms produced by it, and the actual fatality of its operation. I know not whether the period of this fatal operation be extended, as in the infliction of blows and wounds, to a year and a day. But if it be, the most nice and accurate investigation of the progressive advances of disease and death will be incumbent on the physician or surgeon, who is consulted on the occasion. No subject has given rise to more misconception and superstition, than the action of poisons. Numberless substances have been classed as such, which, if not inert, are at least innocuous; and powers have been ascribed to others, far exceeding their real energy. Even Lord Verulam, the great luminary of science, in his charge against the Earl of Somers, for the murder of Sir Thomas Overbury, in the tower of London, seems to give credit to the story of Livia, who is said to have poisoned the figs upon the tree, which her husband was wont to gather with his own hands. And he seriously states that  
“ Weston chased the poor prisoner with poison  
“ after poison; poisoning salts, poisoning meats,  
“ poisoning

“poisoning sweet-meats, poisoning medicines  
“and vomits, until at last his body was almost  
“come, by use of poisons, to the state that  
“Mithridates’s body was by the use of treacle  
“and preservatives, that the force of the poisons  
“was blunted upon him: Weston confessing,  
“when he was tried for not dispatching him,  
“that he had given enough to poison twenty  
“men.”\* In this criminal transaction the truth  
probably was, what has been judiciously sug-  
gested by Rapin, that the lieutenant of the tower,  
refusing to be concerned in the crime, yet not  
daring to discover it, from the fear of the Vis-  
count Rochester’s resentment, seized the victuals,  
sent from time to time for the prisoner, and  
threw them into the house of office. Sir Thomas  
Overbury, however, fell a victim at last to an  
empoisoned glyster.

When the particular drug, or other mean  
employed, can be accurately ascertained, its de-  
leterious qualities should be fully known; and  
these should be cautiously compared with the  
effects ascribed to it, in the case under consider-  
ation. It may often be expedient, also, to ex-  
amine the body of the sufferer by dissection; and  
this should be accomplished as expeditiously as

\* Bacon’s Works, vol. II. p. 614.

possible;

possible; that the changes imputed to death may not be confounded with those which are imputed to poison. But on such points reference can alone be made to the knowledge and experience of the practitioner, and to the lights which he may acquire by consulting Faselius and other works of a similar nature. I shall, therefore, close this article with a few passages of the charge of Mr. Justice Buller to the grand jury relative to the trial of Captain Donellan, for the murder of Sir Theodosius Boughton, at the Warwick assizes, in March 1781. "In this case, gentlemen," he says, "you will have two objects to consider, first, whether the deceased did die of *poison*? secondly, whether the person suspected did assist in *administering* the poison? With respect to the first of these considerations, you will, no doubt, bear *the sentiments of those who are skilled in the nature and effects of poison*, which is of various sorts and most subtile in its operation: From the *information* of such persons you will be able to form an opinion of the effects which *different poisons* have on *different persons*; and also of the effects the same *poisons* have on persons of *different habits and constitutions*. If you find he did get his death by poison, the next case is, to consider, who gave him that poison. Where poison is knowingly given, and death ensues,

“ it is wilful murder ; and if one is present,  
 “ when poison is given by another, he is not  
 “ an accessary but a principal.” \*

XIV. In all civilized countries, the honour and chastity of the female sex are guarded from violence, by the severest sanctions of law. And this protection is at once humane, just, and necessary to social morality. It is consonant to humanity that weakness should be secured against the attacks of brutal strength : It is just that the most sacred of all personal property should be preserved from invasion : And it is essential to morality that licentious passion should be restrained ; that modesty should not be wounded ; nor the mind contaminated, in some instances, before it is capable of forming adequate conceptions of right and wrong. The crime of *rape*, therefore, subjects the perpetrator to condign punishment by every code of jurisprudence, ancient or modern. Amongst the Jews death was inflicted, if the damsel was betrothed to another man : And if not betrothed, a fine, amounting to fifty shekels of silver, was to be paid to her father by him who had *laid hold of the virgin*, and she was to become his wife : And because *he had humbled her, he might not*

\* Hist. Sketches of Civ. Lib. p. 209.

*put her away all his days* : \* For the privilege of divorce was authorized by the Jewish institutions. The Romans made this offence capital, superadding the confiscation of goods. Even the carrying off a woman from her parents or guardians and cohabiting with her, whether accomplished by force, or with her full consent, were made equally penal with a rape, by an imperial edict. For the Roman law seems to have supposed, that women never deviate from virtue, without being seduced by the arts of the other sex. And, therefore, by imposing a powerful restraint on the sollicitations of men, they aimed at the more effectual security of the chastity of women. *Nisi etenim eam sollicitaverit, nisi odiosis artibus circumvenerit, non faciet eam velle in tantum dedecus sese prodere.* But the English law, as Judge Blackstone has observed, does not entertain such sublime ideas of the honour of either sex, as to lay the blame of a mutual fault on one only of the transgressors. And it is, therefore, essential to the crime of rape, that the woman's will is violated by the execution. But, by a statute of Queen Elizabeth, if the crime be perpetrated on a female child, under the age of *ten* years, the consent or non-consent is immaterial, as she is supposed to be of insufficient

\* Deuteronomy xxii. 28, 29.

judgment. Sir Matthew Hale is even of opinion, that such profligacy committed on an infant under *twelve* years, the age of female discretion by common law, either with or without consent, amounts to rape and felony. But the decisions of the courts have, generally, been founded on the statute above-mentioned.

A male infant, under the age of fourteen years, is deemed, by the law, incapable of committing, and therefore cannot be found guilty of a rape, from a presumed imbecility both of body and mind. This detestable crime, being executed in secrecy, and the knowledge of it being confined to the party injured, it is just that her single testimony should be adducible, in proof of the fact. Yet the excellent observation of Sir Matthew Hale merits peculiar attention. "It is  
" an accusation," says he, " easy to be made,  
" and harder to be proved; but harder to be  
" defended by the party accused, though inno-  
" cent." He then relates two extraordinary cases of malicious prosecutions for this crime, which had fallen under his own cognizance; and concludes " I mention these instances, that  
" we may be more cautious upon trials of  
" offences of this nature, wherein the court and  
" jury may, with so much ease, be imposed upon,  
" without great care and vigilance; the heinous  
" nefts

“ nefs of the offence many times transporting  
“ the judge and jury with fo much indignation,  
“ that they are overhaftily carried to the con-  
“ viction of the perfon accused thereof, by the  
“ confident testimony of fometime false and  
“ malicious witneffes.” Collateral and concur-  
rent circumftances of time and place;\* appear-  
ances of violence on examination &c. are, there-  
fore, neceffary to be added to the mere affirma-  
tive evidence of the profecutor. And the in-  
fpection of a furgeon is often required, to afcer-  
tain the reality of the alledged violence. On  
fuch occafions; his testimony fhould be given  
with all poffible delicacy, as well as with the  
utmoft caution. Even external figns of injury  
may originate from difeafe, of which the follow-  
ing example has been communicated to me, by  
a very ingenious furgeon in Manchester.

A girl, about fix years of age, was admitted  
into the Manchester Infirmary, on account of a  
mortification in the female organs, attended  
with great forenefs and general depression of  
ftrength. She had been in bed with a young  
man; and there was reafon to fufpect, that he  
had taken criminal liberties with her. The

\* Thefe circumftances are particularly adverted to in the  
Mofaic Law. See Deut. xxii. 25, 26, 27.

mortification increased, and the child died. The young man, therefore, was apprehended, and tried at the Lancaster Assizes; but was acquitted on sufficient evidence, that many instances of a similar disease had appeared about the same period, in which there was no possibility of injury or guilt. In one case, Mr. Simmons, the gentleman to whom I am indebted for this information, opened the body after death. The disease had been a *typhus*, accompanied with a mortification of the *pudenda*. There was no evident cause of this extraordinary symptom, discoverable on inspection. The lumbar glands were of a dark colour; but all the *viscera* were found.

XV. Concerning *nuisances*, the investigation and testimony of the faculty may be required, whenever they are of a nature offensive by the vapours which they emit; or injurious to the health of individuals, or of the community. The law defines any thing that worketh hurt, inconvenience, or damage, to be a nuisance.\* Thus if a person keeps hogs, or other noisome animals, so near the house of another, that the stench incommodes him, and renders the air unwholesome, this is a nuisance; because it deprives him

\* See Blackstone's Comment. Book III. ch. xiii; and Book IV. ch. xiii.



of the enjoyments and benefits of his habitation. A smelting house for lead, the smoke of which kills the grass and corn, and injures the cattle of a neighbouring proprietor of land, is deemed a nuisance. Dye-houses, tanning-yards &c. are nuisances, if erected so near a water-course, as to corrupt the stream. But a chandler's factory, even when situated in a crowded town, is said to be privileged from action or indictment, because candles are regarded as a necessary of life. Hawkins, however, questions the authority of this opinion, since the making of candles, may be carried on in the country without annoyance.\* But this is hardly possible in a populous neighbourhood: And as Lord Mansfield has adjudged, that, in such cases, what makes the enjoyment of being and property uncomfortable is, in the view of the law, a nuisance†; various works and trades, essential to the happiness and interest of the community, may fall under this construction. But chemistry, mechanics, and other arts and sciences, furnish methods of diminishing, or obviating almost every species of noisome vapour. And there can be no doubt that vitriol works, aqua fortis works, marine acid bleaching works, the singeing of velvets &c. may be carried on with very little inconvenience

\* 1 Hawk. 199. Burn's Justice, vol. III. p. 239.

† Burron. Mansfield, 333. Burn U. S.

to a neighbourhood, by means neither difficult nor expensive. The same observation may be applied to the business of the dyer, the fellmonger, the tanner, the butcher, and the chandler. And as these with many other disgusting trades are, in some degree, necessary in large towns, justice and policy require, that they should only be prosecuted as nuisances, when not conducted in the least offensive mode possible. To guard against arbitrary powers in municipal government, and to render the decision and investigation of such points perfectly consistent with the liberty of the subject, the reference should be made to a jury; or at least, any individual should be allowed an appeal to one, if he think himself aggrieved.

The frequency of fires, in large manufacturing towns, makes it expedient that magistrates, or commissioners, should be authorized to scrutinize rigidly into the causes of them, when they occur; to punish neglect or carelessness, as well as malicious intention; and to enforce suitable measures of prevention. The plans, proposed for this last very important purpose, by Mr. Hartley and Lord Stanhope, have been proved to be effectual, and are not expensive. The adoption of them, therefore, or of other means, which may hereafter be discovered, should be  
required,

required, under a heavy penalty, in cases deemed by insurers *doubly hazardous*.

XVI. The laws, which specially relate to the *powers, privileges, honours, and emoluments* of the *faculty*, can require no pleas to recommend them to attention. But as they will fall under the subject-matter of the following section, the present shall be closed with a few observations on *judicial testimony*, as it concerns physicians and surgeons.

It is a complaint made by coroners, magistrates, and judges, that medical gentlemen are often reluctant in the performance of those offices, required from them as citizens qualified, by professional knowledge, to aid the execution of public justice. These offices, it must be confessed, are generally painful, always inconvenient, and occasion an interruption to business, of a nature not to be easily appreciated or compensated. But as they admit of no substitution, they are to be regarded as appropriate debts to the community, which neither equity nor patriotism will allow to be cancelled.

When a physician or surgeon is called to give evidence, he should avoid, as much as possible, all obscure and technical terms, and the un-

necessary display of medical erudition. He should deliver, also, what he advances, in the purest and most delicate language, consistent with the nature of the subject in question. When two or more gentlemen of the faculty are to offer their opinions or testimony, it would sometimes tend to obviate contrariety, if they were to confer freely with each other, before their public examination. Intelligent and honest men, fully acquainted with their respective means of information, are much less likely to differ, than when no communication has previously taken place. Several years ago, a trial of considerable consequence occurred, relative to a large copper work; and two physicians of eminence were summoned to the assizes, to bear testimony concerning the salubrity or insalubrity of the smoke issuing from the furnaces. The evidence they offered was entirely contradictory. One grounded his testimony on the general presumption that all ores of copper contain arsenic; and consequently that the effluvia, proceeding from the roasting of them, must be poisonous because arsenical. The other had made actual experiments on the ore, employed in the works under prosecution, and on the vapours which it yielded: He was thus furnished with full proof that no arsenic was discoverable in either. But the affirmative prevailed over the negative testimony, from the authority of the physician who delivered it; an  
authority

authority which he probably would not have misapplied, if he had been antecedently acquainted with the decisive trials made by his opponent.

XVII. It is the injunction of the law, sanctioned by the solemnity of an oath, that in judicial testimony, *the truth, the whole truth, and nothing but the truth* shall be delivered. A witness, therefore, is under a sacred obligation to use his best endeavours that his mind be clear and collected, unawed by fear, and uninfluenced by favour or enmity. But in criminal prosecutions, which affect the life of the person accused, scruples will be apt to arise in one who, by the advantages of a liberal education, has been accustomed to serious reflection, yet has paid no particular attention to the principles of political ethics. It is incumbent, therefore, on gentlemen of the faculty, to settle their opinions concerning the right of the civil magistrate to inflict capital punishment; the moral and social ends of such punishment; the limits prescribed to the exercise of the right; and the duty of a citizen to give full efficiency to the laws.

The magistrate's *right* to inflict punishment, and the ends of such punishment, though intimately connected, are in their nature distinct. The right is clearly a substitution or

transfer of that which belongs to every individual, by the law of nature, viz. instant self-defence, and security from future violence or wrong. The ends are more comprehensive, extending not only to complete security against offence, but to the correction and improvement of the offender himself, and to counteract the disposition of others to offend. Penal laws are to be regulated by this standard; and the lenity or severity, with which they are executed, should, if possible, be exactly proportionate to it. In different circumstances, either personal or public considerations may preponderate: And in cases of great moral atrocity, or when the common weal is essentially injured, all regard to the reformation of a criminal is superseded; and his life is justly forfeited to the good of society. In the participation of the benefits of the social union, he has virtually acceded to its conditions; and the violation of its fundamental articles renders him a rebel and an enemy, to be expelled or destroyed, both for the sake of security and as an awful warning to others. When capital punishments are viewed in this light, the most humane and scrupulous witness may consider himself as sacrificing private emotions to public justice and social order; and that he is performing an act at once beneficial to his country and to mankind. For political and  
moral

moral œconomy can subsist in no community, without the steady execution of wise and salutary laws : And every atrocious act, perpetrated with impunity, operates as a terror to the innocent, a snare to the unwary, and an incentive to the flagitious. The criminal, also, who evades the sentence of justice, like one infected with the pestilence, contaminates all whom he approaches. He, therefore, who, from false tenderness or a misguided conscience, has prevented conviction, by withholding the necessary proofs,\* is an accessary to all the evils which ensue. The maxim, that *it is better ten villains should be discharged than a single person suffer by a wrong adjudication*, is one of those partial truths generally misapplied, because not accurately understood. It is certainly eligible that the rules and the forms of law should be so precise and immutable, as not to involve the innocent in any decision obtained by corruption, or dictated by passion and prejudice ; though this should sometimes furnish an outlet for the escape of actual offenders. The plea, also, may have some validity, in crimes of a nature chiefly political (with which, however, the faculty can

\* “ The oath, administered to the witnesses, is not only  
“ that what he deposes shall be true, but that he shall also  
“ depose the whole truth : So that he is not to conceal any part  
“ of what he knows, whether interrogated particularly to that  
“ point or not.” Blackstone, B. III. ch. xxiii.

professionally have no concern) such as coining and forgery, or in cases wherein the punishment much exceeds the evil or turpitude of the offence. For Lord Bacon has well observed, that “over great penalties, besides their acerbity, deaden the execution of the law.”\* And when they are discovered to be unjustly inflicted, its authority is impaired; its sanctity dishonoured; and veneration gives place to disgust and abhorrence.

But the dread of *innocent blood being brought upon us*, by explicit and honest testimony, is one of those superstitions, which the nurse has taught, and which a liberal education ought to purge from the mind. And if, in the performance of our duty, innocence should unfortunately be involved in the punishment of guilt, we shall assuredly stand acquitted before God and our own consciences. The convict himself, lamentable as his fate must be regarded, may console himself with the reflection that, though his sentence is unjust, “he falls for his country, whilst he suffers under the operation of those rules, by the general effect and tendency of which the welfare of the community is maintained and upheld.”†

\* See Proposal for Amending the Laws of England. Bacon's Works, 4to. vol. II. p. 542.

† Paley's Mor. and Polit. Phil. B. VI. ch. ix. p. 553. 4to.



XVIII. When professional testimony is required, in cases of such peculiar malignity as to excite general horror and indignation, a virtuous mind, even though scrupulous and timid, is liable to be influenced by too violent impressions; and to transfer to the accused that dread and aversion, which, before conviction, should be confined to the crime, and as much as possible withheld from the supposed offender. If the charge, for instance, be that of parricide, accomplished by poison, and accompanied with deliberate malice, ingratitude, and cruelty; the investigation should be made with calm and unbiassed precision, and the testimony delivered with no colouring of passion, nor with any deviation from the *simplicity of truth*. When *circumstantial proofs* are adduced, they should be arranged in the most lucid order, that they may be contrasted and compared, in all their various relations, with facility and accuracy, and that their weight may be separately and collectively determined in the balance of justice. For, in such evidence, there subsists a regular gradation from the slightest presumption to complete moral certainty. And if the witness possess sufficient information in this branch of philosophical and juridical science, he will always be competent to secure himself, and, on many occasions, the court also, from fallacy and error. The Marquis

quis de Beccaria has laid down the following excellent theorems, concerning judicial evidence.

“ When the proofs of a crime are dependant on  
“ each other, that is, when the evidence of each  
“ witness, taken separately, proves nothing; or  
“ when all the proofs are dependant upon one,  
“ the number of proofs neither increases nor  
“ diminishes the probability of the fact; for the  
“ force of the whole is no greater than the force  
“ of those on which they depend; and if this  
“ fails, they all fall to the ground. When the  
“ proofs are independant of each other, the pro-  
“ bability of the fact increases in proportion to  
“ the number of proofs; for the fallhood of one  
“ does not diminish the veracity of another. ....  
“ The proofs of a crime may be divided into two  
“ classes, perfect and imperfect. I call those  
“ perfect, which exclude the possibility of inno-  
“ cence; imperfect, those which do not exclude  
“ this possibility. Of the first, one only is suf-  
“ ficient for condemnation; of the second, as  
“ many are required as form a perfect proof;  
“ that is to say, each of these, separately taken,  
“ does not exclude the possibility of innocence;  
“ it is nevertheless excluded by their union.”\*

\* Beccaria's Essay on Crimes and Punishments, chap. xiv.



